

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER	<input type="checkbox"/>	DATE	<u>September 25, 2019</u>
MOTOR CARRIER MATTER	<input type="checkbox"/>	DOCKET NO.	<u>2019-230-E</u>
UTILITIES MATTER	<input checked="" type="checkbox"/>	ORDER NO.	<u>2019-686</u>

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.

SUBJECT:

DOCKET NO. 2019-230-E - Enrique McMilion, Jr., Complainant/Petitioner v. Duke Energy Carolinas, LLC, Defendant/Respondent - Staff Presents for Commission Consideration Duke Energy Carolinas, LLC's Motion to Dismiss Complaint.

COMMISSION ACTION:

In Docket No. 2019-230-E, Mr. Enrique McMilion, Jr. (Who I will hereafter refer to as "Complainant") filed a complaint against Duke Energy Carolinas, LLC requesting this Commission find the utility's installation of smart meters to be an unlawful infringement on his personal privacy. Complainant asserts Duke should be treated as a state actor because state regulation authorizes Duke to be the exclusive provider of electric power in its service territory. He claims that permitting Duke to install smart meters without the express consent of each individual customer amounts to unlawful state surveillance in violation of the Fourth Amendment. Complainant further argues that Commission Regulation 103-321 essentially renders all smart meters unlawful, because it requires that "meters shall be read and bills rendered on a monthly basis not less than twenty-eight days nor more than thirty-four days." I move that we find both of these arguments to be without merit, and that we grant Duke's motion to dismiss this complaint.

First, Duke is not a state actor, and Complainant therefore has no constitutional right to privacy that is enforceable against Duke. In Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974), the Supreme Court of the United States rejected the argument now advanced by Complainant. In that case, the Court held that a Pennsylvania electric utility with the exclusive right to provide power to its service territory was not a state actor.

Second, Regulation 103-321 merely requires only that meters shall be read and bills rendered monthly. The phrase "not less than twenty-eight days nor more than thirty-four days" defines what constitutes a "monthly basis." It does not prohibit collection of data on a more frequent basis. In Total Environmental Solutions, Inc., 351 S.C. 175, 568 S.E.2d 365 (2002), the Supreme Court of South Carolina reaffirmed its longstanding rule that great deference must be given to an agency's interpretation of regulations where it has particular expertise. Our interpretation stated above is the only reasonable reading of our regulation. Although Complainant contends, at page 2 of his brief opposing Duke's motion to dismiss, that smart meters literally violate the regulation "several times a minute, hundreds of times per hour, and thousands of times per day," this Commission declines to adopt Complainant's interpretation, which would lead to the absurd result of banning all but electromechanical analog meters.

Based upon these legal findings, I move that we grant Duke's motion to dismiss.

If the Complainant wishes to opt out of the AMI meter, he avail himself of Rider MRM, which was approved by the Commission in Order No. 2016-791 and amended in Order No. 2019-429, and have the Company install a manually read meter.

PRESIDING: Randall

SESSION: Regular

TIME: 2:00 p.m.

	MOTION	YES	NO	OTHER
BELSER	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
ERVIN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HOWARD	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Absent</u>
RANDALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WHITFIELD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WILLIAMS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Commission Business

(SEAL)

RECORDED BY: J. Schmieding

